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Commissioner
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Testimony
Before the Committee on Resources
United States House of Representatives

Oversight Hearing on the Impact of Revised Statute 2477
June 28, 2004

My name is Alan Gardner. I am a Washington County Commissioner. I would like to thank the committee for the opportunity of hosting this hearing in our county, and thank them for the opportunity to comment. I am the fifth generation of my family to live in Washington County. All of my ancestors on both my father's and my mother's sides came to this area prior to 1863 and settled in six different communities. Robert Richey was the first to arrive. He came in 1855 as a missionary to the Indians. Congress passed the Revised Statute of the Mining Law, Section 2477, in 1866. This statute gave my relatives and other settlers the right to establish transportation corridors as needed for connections between the communities and to develop the natural resources of the area. The statute reads: "The right-of-way for the construction of highways across public lands not reserved for public purposes is hereby granted." No documentation or recording of any type was required.

Transportation is the lifeblood of our communities in Washington County and RS 2477 roads play an important role in our transportation system. Some of these rights-of-way predate the settlement of the county and include the old Spanish Trail (later also known as the California Trail), and the Domingues-Escalante Trail. Some sections of these trails are now paved roads and other sections remain dirt roads. But even today they still provide important RS 2477 roads that access specific areas of our county—as well as many other roads that have developed as needed over the years—until Congress passed FLPMA in 1976. The majority of our county roads were in use prior to that time (1976). Throughout the West, RS 2477 roads have provided access to our public lands for ranchers, farmers, miners, hunters, timber, oil and gas, all types of outdoor recreation, and recreational driving for many years, with many of these uses continuing to expand each year.

When Congress passed FLPMA in 1976 and repealed RS 2477, it grandfathered the rights-of-way previously given under the RS 2477 rights-of-way statute. However, since that time there has been increasing pressure from the Departments of Interior and Agriculture (brought on by extreme environmental groups) to limit and even abandon these rights-of-way, especially during the Clinton administration while Bruce Babbitt was serving as Secretary of Interior. The State of Utah and the Utah Association of Counties have worked diligently trying to resolve this issue. The state of Utah and its counties have prepared, if necessary, to perfect their claims to these rights-of-way in the courts. Counties have systematically collected depositions, photographs, and GPS data on many of these roads throughout the state. This effort will continue to move forward until all assertions are sufficiently documented.

While this effort has been ongoing, Governor Leavitt negotiated a Memorandum of Understanding (or MOU) with the Department of the Interior in an effort to resolve a large number of the rights-of-way conflicts with the Interior Department using Disclaimers of Interest authority provided for in FLPMA on roads asserted. From the counties' perspectives, the negotiated MOU has deficiencies, with the most glaring being the lack of definition of scope. That single issue has proven to be a major impediment to any successful resolution of roads asserted under the MOU. Another concern regarding the MOU came in the form of an amendment offered to the 2004 Interior Appropriations Bill by Congressman Udall from Colorado to prevent the BLM from allocating any funds to be spent on the MOU process. Had his amendment succeeded, it would have had the effect of killing the MOU. County officials and state officials, along with members of Congress, worked to defeat this amendment which would have been very detrimental to the state and counties of Utah.

Congressmen Bishop and Cannon were extremely helpful in this effort. Congressman Matheson, on the other hand, in spite of an intense effort from state officials and county commissioners from most of the counties, both Republicans and Democrats, worked against the efforts made by the state and counties of Utah to preserve access to our public lands. Needless to say, Congressman Matheson's unwillingness to help protect the interests of his constituents was very disappointing to those of us who have worked long and hard to resolve this issue. Mr. Udall served notice of his intent to offer his ill-conceived amendment again last week when the 2005 Interior Appropriations Bill was considered in the House. In the end, he did not offer it.

The MOU has taken much longer to implement than expected. We hope for better cooperation from Interior and the beginning of a process of resolution this year. That is essential for us in Utah as these rights-of-way are increasingly under challenge by extreme environmentalists who would deny the public access to their lands. They claim many of these roads weren't "constructed," suggesting modern methods of construction. They ignore the fact that in 1866 when this law was passed (many years before the car was invented), the major part of "construction" was repeated travel over the same route with a team and wagon, and maybe moving some rocks or clearing out underbrush or trees by hand. Counties have been accused by extreme environmental groups of wanting to blacktop every RS 2477 road—and pave the national parks. I hiked many of the trails in Zion National Park in 1971 and they had already been paved by the National Park Service. Counties have neither the desire nor the budget to pave every RS 2477 road. Some of them do need maintenance to make them safer to travel, others receive very little maintenance and can remain two-track—but many of them are RS 2477 rights-of-way.

So long as the federal government owns the land, it has an obligation to resolve the access issue to those lands with reasonable/workable solutions on behalf of the American people: especially those taxpaying citizens who live near or depend upon the lands for their sustenance. Reliable certainty of use of roads on these lands is the most important principle of access for county governments.

Thank you for allowing me to present this statement to you. SUPPLEMENTAL SHEET